

## Message Text

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ACTION SNM-02

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FOR: MS. FALCO S/NM

E.O. 11652: N/A  
TAGS: CASC, BL  
SUBJ: BACKGROUND REPORT ON AMERICAN PRISONERS.

1. FOLLOWING SHOULD BE OF ASSISTANCE TO DEPARTMENT IN REVIEWING CASES OF AMERICAN PRISONERS.
2. PROBLEM OF U.S. PRISONERS HAS ITS ORIGIN PRIOR TO 1973 WHEN BOLIVIA, ALONG WITH U.S. AND OTHER COUNTRIES, BECAME INCREASINGLY AWARE OF THE INTERNATIONAL NARCOTICS TRAFFIC. IN THOSE YEARS, COCAINE BECAME MORE PROMINENT AND BEGAN TO BE EXPORTED ILLEGALLY AS A FINISHED PRODUCT FROM BOLIVIA IN SIGNIFICANT QUANTITIES. THIS WAS A COMPLETE CHANGE FROM THE TRADITIONAL USE OF THE COCA LEAF WHICH HAD BEEN CULTIVATED AND CHEWED BY THE ANDEAN POPULATION FOR OVER 1000 YEARS. AS COCAINE PRODUCTION IN BOLIVIA INCREASED, THE COUNTRY EXPERIENCED AN INFLUX OF TRAFFICKERS, COURIERS, USERS, AND EXPERIMENTERS WITH THE DRUG.
3. WHEN THE GOB DRAFTED ITS FIRST NARCOTICS LAW IN THE BEGINNING OF 1973, THE US WAS INTERESTED AND APPROVING, SINCE WE WISHED

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TO REDUCE THE FLOW OF THE DRUG INTO THE US. WE URGED THAT REASONABLE SENTENCES BE PROVIDED FOR NARCOTICS OFFENSES BUT THE BOLIVIANS WANTED A SEVERE LAW AND IN THE FINAL STAGES THE PENALTY PROVIDED WAS 10-25 YEARS IMPRISONMENT, BOTH FOR POSSESSION AND TRAFFICKING. AT THE SAME TIME A SMALL GOB NARCOTICS POLICE UNIT WAS ESTABLISHED, BUT IN GENERAL THEY WERE POORLY PAID, LACKED EQUIPMENT, HAD FEW TRAVEL FUNDS, AND WERE

UNABLE TO RESPOND ADEQUATELY TO THE NEW FLOW OF DRUGS.

4. WHILE THE GOB INTENDED TO CONCENTRATE ITS EFFORTS ON MAJOR TRAFFICKERS, MINOR OFFENDERS WERE PICKED UP AS WELL, INCLUDING YOUNG US CITIZENS. SOME OF THESE WERE ROUGHED UP AND BEATEN AT THE TIME OF THEIR ARREST. THE EMBASSY MOVED IMMEDIATELY TO PREVENT SUCH INCIDENTS AND THERE HAVE BEEN NO REPORTS RECENTLY OF BEATINGS NOR HAVE THERE BEEN AT ANY TIME VERIFIED COMPLAINTS OR REPORTS OF TORTURE.

5. THERE WERE DEFECTS IN THE 1973 NARCOTICS LAW OTHER THAN THE SEVERE SENTENCES PROVIDED AND A GOB COMMISSION WAS ESTABLISHED IN 1975-76 TO DRAFT A NEW LAW. THE COMMISSION AGAIN THOUGH HEAVY SENTENCES SHOULD BE PROVIDED FOR ALL NARCOTICS OFFENSES. IN FACT, SOME MEMBERS THOUGH US COURTS WERE FAR TOO LAX IN THEIR TREATMENT OF DRUG TRAFFICKERS. IN EARLY 1976, THE US EMBASSY MADE A MAJOR EFFORT TO PERSUADE THE COMMISSION TO ADOPT MORE REASONABLE SENTENCES IN THE PROPOSED NEW LAW AND EVENTUALLY THE COMMISSION CHANGED THE DRAFT TO PROVIDE FOR REDUCED SENTENCES FOR SIMPLE POSSESSION, NAMELY 2-8 YEARS. IN ADDITION TO THE REDUCED SENTENCES FOR POSSESSION, THE NEW LAW ALSO DRASTICALLY REDUCED THE LENGTH OF TRIALS IN NARCOTICS CASES BY ELIMINATING THE FIRST PHASE (SUMARIO). PAROLE WAS ALSO PROVIDED FOR PRISONERS WHO HAD COMPLETED TWO-THIRDS OF THEIR SENTENCES WITH GOOD BEHAVIOR.

6. UNDER THE OLD LAW AND UNTIL THE PROMULGATION OF THE NEW LAW IN JANUARY 1977, MOST OF THE US PRISONERS AND THEIR ATTORNEYS DID NOT PRESS FOR PROMPT TRIALS BECAUSE OF THE LIMITED OFFICIAL USE

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SEVERITY OF THE PENALTIES UNDER THE OLD LAW AND ANTICIPATION THAT A NEW LAW WAS TO BE PASSED.

7. IMMEDIATELY FOLLOWING THE ENACTMENT OF THE NEW LAW AT THE END OF JANUARY, THE EMBASSY INITIATED A MAJOR PUSH TO MOVE ALL THE PRISONER CASES. THIS PERIOD COINCIDED WITH THE ARRIVAL OF A SECOND CONSULAR OFFICER WHICH THE EMBASSY HAD REQUESTED MANY MONTHS EARLIER. THE AMBASSADOR AND EMBASSY OFFICERS HELD TALKS ON THE PROBLEM WITH PRESIDENT BANZER, THE MINISTRY OF INTERIOR, THE FOREIGN MINISTER, SUBSECRETARY OF JUSTICE, JUDGES, "FISCALES" (PUBLIC PROSECUTORS), AND OTHER OFFICIALS CONCERNED. IN ADDITION TO PRESSING FOR RAPID HEARINGS, THE EMBASSY ARRANGED FOR A CONSULAR OFFICER TO ATTEND EACH HEARING, PROVIDED PAID INTERPRETERS WHEN NECESSARY, AND HIRED THE SERVICES OF TWO BOLIVIAN LEGAL ADVISERS. A PRISONERS COMMITTEE WAS ORGANIZED UNDER THE CHAIRMANSHIP OF THE DEPUTY CHIEF OF MISSION TO DRAW ON THE RESOURCES, EXPERIENCE, AND ADVICE OF ALL SECTIONS OF THE EMBASSY AND TO RECOMMEND WAYS IN WHICH THE TRIALS COULD BE EXPEDITED.

8. ALSO, AT THE END OF JANUARY A THREE MAN TEAM HEADED BY A SENIOR OFFICER OF THE STATE DEPARTMENT VISITED BOLIVIA TO LEARN ABOUT THE PRISONERS, THEIR LEGAL STATUS AND WELFARE. THIS TEAM MET WITH GOB OFFICIALS AND JUDGES AND VISITED ALL THE U.S. PRISONERS IN LA PAZ, COCHABAMBA AND SANTA CRUZ. THE TEAM'S VISIT WAS EXTREMELY USEFUL IN FOCUSING GOB ATTENTION ON THE PRISONERS AND DEVELOPING MORE COMPLETE INFORMATION ON THEIR SITUATION.

9. THE RESULT OF ALL THESE EFFORTS WERE NOT VERY EVIDENT AT FIRST, BUT THE EFFECTS ACCUMULATED. THERE HAVE NOW BEEN JUDICIAL HEARINGS IN EACH OF THE CASES INVOLVING U.S. CITIZENS AND BOTH

FREQUENCY AND TIMELINESS OF THESE HEARINGS, WHICH CONSTITUTE THE TRIAL UNDER BOLIVIAN LAW, HAVE GREATLY INCREASED. SENTENCE HAS BEEN PASSED ON FOUR U.S. CITIZENS IN ONE CASE LIMITED OFFICIAL USE

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AND THAT SENTENCE IS NOW GOING THROUGH THE REVIEW PROCESS. IN THE REVIEW CONFIRMS THE LOW COURT DECISION, TWO OF THE FOUR ARE EXPECTED TO BE RELEASED SINCE THEY HAVE BEEN IN JAIL FOR PERIODS AS LONG AS THEIR SENTENCES. ONE PRISONER WHO APPEARS TO BE ADDICTED TO DRUGS WAS REMOVED TO A REHABILITATION CLINIC ON EMBASSY INSISTENCE. ANOTHER PRISONER, MICHELLE FRYER, WAS RELEASED MAY 14 ON A STAY OF PROCEEDINGS DUE TO LACK OF EVIDENCE AGAINST HER. IN ADDITION, SEVERAL CASES INVOLVING 10 TO 12 AMERICAN HAVE ADVANCED TO THEIR FINAL STAGES AND SENTENCING IS EXPECTED IN A SHORT PERIOD.

10. ON THE BOLIVIAN SIDE, IN ADDITION TO THE EFFORTS OF OFFICIALS TO KEEP THE CASES MOVING, A NEW SUBSECRETARY OF JUSTICE WAS APPOINTED WHO HAS BEEN COOPERATIVE IN ACCELERATING PROCEDURES AND SYMPATHETIC TO PROBLEMS OF INDIVIDUAL PRISONERS. THE GOB HAS ESTABLISHED THREE NEW CRIMINAL COURTS IN LA PAZ AND THE JUDGES HAVE BEEN NAMED. THIS MEASURE WILL SOON AFFECT THE PACE OF HEARINGS AND REDUCE DELAYS RESULTING FROM CROWDED COURT CALANDARS. LA PAZ, WITH A POPULATION OF 500,000 HAS HAD IN THE PAST THREE JUDGES TO COPE WITH ALL ORDINARY CRIMINAL CASES PLUS 300-400 NARCOTICS CASES.

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INFO AMEMBASSY LIMA PRIORITY

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FOR: MS. FALCO S/NM

11. OTHER DELAYS IN PROCEDURES HAVE RESULTED SOMETIMES FROM LACK OF DEDICATION OF DEFENSE ATTORNEYS OF INDIVIDUAL PRISONERS. THE EMBASSY BELIEVES, HOWEVER, THAT WITH THE ASSISTANCE OF ITS LEGAL ADVISORS, ATTORNEYS ARE NOW GENERALLY PURSUING CASES MORE ATTENTIVELY. ANOTHER DIFFICULTY IS THAT SOME U.S. PRISONERS ARE INVOLVED IN CASES WITH PRISONERS OF OTHER NATIONALITIES. THIS MENAS DELAY IN THE SENSE THAT ALL PRISONERS MUST BE HEARD IN THE SAME COURT AND A DECISION IN THE CASE OF THE U.S. CITIZEN MUST AWAIT A DECISION ON ALL PERSONS IN THE PARTICULAR GROUP.

12. DELAYS ARE INHERENT IN THE BOLIVIAN JUDICIAL SYSTEM ITSELF. BOLIVIAN IS A SOVERIGN STATE WITH A LEGAL STRUCTURE GOING BACK TO THE LAST CENTURY AND BASED UPON THE NAPOLEONIC SYSTEM. UNDER THIS SYSTEM DUE PROCESS IN QUITE DIFFERENT THAN UNDER COMMON LAW SYSTEMS SUCH AS IN THE U.S. THERE IS NO JURY AND THE TRIAL CONSISTS OF A SERIES OF INVESTIGATORY HEARINGS BEFORE A JUDGE. THE CHARGEZ, UNDER WHICH THE SUSPECT WILL BE SENTENCED ARE NOT FINALLY KNOWN UNTIL THE JUDGE ACTUALLY PRONOUNCES SENTENCE. THE JUDICIARY IS INDEPENDENT AND THE PRESENT BOLIVIAN  
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GOVERNMENT AFTER IT ASSUMED POWER IN 1972 MADE A POINT OF STRESSING PUBLICALLY THAT THE JUDICIARY WAS TO REMAIN INDEPENDENT. HENCE, THERE ARE A NUMBER OF JUDGES WHO TAKE ULTRA LEGALISTIC VIEWPOINTS IN INTERPRETING THE LAW. IN THIS CONNECTION, THE EMBASSY HAS MADE EFFORTS TO WARN AMERICANS THROUGH PAMPHLETS AND FLYERS DISTRIBUTED BY THE CONSULATE THAT BOLIVIAN NARCOTICS LAWS ARE SEVERE.

13. IN ADDITION TO A COMPLEX JUDICIAL SYSTEM IT SHOULD BE NOTED THAT BOLIVIA IS ONE OF THE TWO POOREST COUNTRIES IN THE HEMISPHERE WITH A POPULATION OF ABOUT 6 MILLION AND MAINLY UNDEVELOPED RESOURCES. THERE IS ONE PAVED NATIONAL ROAD LEADING OUT OF THE CAPITAL. UNDER THESE CIRCUMSTANCES IT IS NOT SURPRISING THAT RESOURCES FOR THE ADMINISTRATION OF JUSTICE ARE SLIM, THAT JUSTICE IS SLOW AND THAT FOOD AND ACCOMODATIONS IN JAILS IS PRIMITIVE BY U.S. STANDARDS. OUR CONSUL AND OTHER OFFICERS HAVE VISITED THE U.S. PRISONERS REGULARLY IN THE BOLIVIAN JAILS. IN ADDITION, MEMBERS OF THE ENGLISH SPEAKING COMMUNITY HAVE ALSO VISITED THE PRISONERS ON A REGULAR BASIS AND HELPED IN MAINTAINING PRISONER WELFARE AND MORALE. IT APPEARS THAT THERE HAS BEEN SOME MISUNDERSTANDING, BASED ON INCORRECT INFORMATION WHICH HAS AROUSED THE EXPECTATIONS OF PARENTS AND PRISONERS. IT IS APPARENTLY NOT UNDERSTOOD BY SOME PARENTS THAT U.S. LEGISLATION DOES NOT PROVIDE FUNDS OR OTHER RESOURCES THROUGH U.S. EMBASSY FOR IMPROVING THE SITUATION OF U.S. PRISONERS IN FOREIGN JAILS, SUCH AS FUNDS FOR INNOCULATIONS, FOOD SUPPLEMENTS, VITAMINS AND MEDICAL AND DENTAL CARE. ON THE OTHER HAND, THE EMBASSY HAS BEEN SUCCESSFUL IN ARRANGING FOR PRISONERS TO OBTAIN PERMISSION TO VISIT DENTISTS AT THEIR OWN EXPENSE AND FOR THEM TO HAVE MEDICAL ATTENTION AS REQUIRED. ON NUMEROUS OCCASIONS, HOWEVER, WE HAVE ONLY LEARNED THAT MEDICAL OR DENTAL ATTENTION WAS NEEDED INDIRECTLY WHEN PRISONERS HAVE WRITTEN THEIR PARENTS AND PARENTS HAVE PASSED THE INFORMATION BACK TO THE EMBASSY THROUGH THE DEPARTMENT OF STATE.

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14. THE CASE OF THE U.S. PRISONERS AND THE EFFORTS OF THE EMBASSY TO ACCELERATE THEIR TRIALS HAVE RECEIVED AMPLE PRESS COVERAGE RECENTLY. THE SUBSECRETARY OF JUSTICE HAS NOTED THAT A REACTION TO THE GIVING OF PREFERENCES TO U.S. CASES BY THE JUDGES MAY CAUSE CRITICISM. SOME OBSERVERS IN FACT, THINK THAT PUBLIC PRESSURE MAY EVENTUALLY MAKE IT DIFFICULT FOR U.S. CASES TO BE MOVED MORE RAPIDLY THAN THOSE OF THE BOLIVIANS AND OTHER NATIONALITIES. OUR EMBASSY HOPES HOWEVER, THAT WITH THE RECENT INCREASE IN NUMBER OF JUDGES ALL TRIALS WILL MOVE MORE QUICKLY AND AN ADVERSE REACTION CAN BE AVOIDED.

15. SEVERAL GOB OFFICIALS INCLUDING THE PRESIDENT AND THE MINISTER OF INTERIOR HAVE MENTIONED THE USEFULNESS OF NEGOTIATING A U.S./BOLIVIAN TREATY ON THE SERVING OF PENAL SENTENCES SIMILAR TO THAT WITH MEXICO WHICH IS NOW BEFORE THE SENATE FOR RATIFICATION. IT HAS BEEN SUGGESTED THAT JUDGES IN SOME OF THE U.S. CASES WOULD HAVE LESS DIFFICULTY IN MOVING THE

TRIALS QUICKLY IF THEY THOUGHT THAT SENTENCES MIGHT EVENTUALLY BE SERVED IN THE U.S. THE GOB FRANKLY ADMITS THE DEFICIENCIES OF ITS OWN PRISONS AND THERE IS A CONCERN ABOUT SENTENCING U.S. CITIZENS TO LENGTHY TERMS EVEN IF THESE APPEAR TO BE JUSTIFIED. MOREOVER, THE BOLIVIANS HAVE THE OPTION THAT THE PRESENCE OF NEGOTIATING TERMS ITSELF WOULD HAVE A HELPFUL INFLUENCE IN ADVANCING THE U.S. PRISONER CASES.

16. THE STATE DEPARTMENT AND THE EMBASSY AT LA PAZ HAVE RECEIVED MANY COMMUNICATIONS FROM PARENTS IN WHICH AMNESTY FOR ALL PRISONERS BY THE GOB IS PROPOSED AND THE USG IS URGED TO NEGOTIATE SUCH AMNESTY. THE GOB, BOTH IN THE PRESS AND THROUGH OUR EMBASSY HAS STATED CATEGORICALLY THAT IT IS NOT PREPARED TO CONSIDER SUCH AN AMNESTY. THE GOB HAS REITERATED THAT A SUBSTANTIAL NUMBER OF U.S. PRISONERS ARE ACCUSED OF TRAFFICKING, THAT THE EVIDENCE IS HEAVY IN THESE CASES AND THAT THE ONLY COURSE IS TO LIMITED OFFICIAL USE

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FOLLOW BOLIVIA'S JUDICIAL PROCEDURES WHICH THEY ARE PREPARED TO EXPEDITE AS MUCH AS POSSIBLE. WE HAVE LOOKED AT ALL THE CASES AND WHILE A FEW ARE WEAK, THERE ARE GROUNDS FOR GOB LEGAL ACTION IN ALMOST ALL. SOME INVOLVED AS MUCH AS 20 KILOS OF COCAINE. THERE ARE A FEW NEW CASES RESULTING IN THE DETENTION OF U.S. CITIZENS WITHIN THE PAST FEW DAYS WHERE TRAFFICKING IN MULTI-KILOGRAM AMOUNTS IN INVOLVED. IN THESE CASES, AS IN ALL, OUR EMBASSY WILL PRESS FOR FAIR AND SPEEDY TRIALS AND THE EFFORTS OF OUR CONSUL OFFICERS WILL BE DEVOTED TO THEIR WELFARE AND PROTECTION.

17. THE EMBASSY WILL CONTINUE TO PUSH CASES THROUGH THE JUDICIAL MAZE, ASSISTING EVEN WITH SUCH THINGS AS PROVIDING PAPER, CARRYING DOCUMENTS AND ARRANGING FOR TRANSLATIONS, AND CONTINUE TO DO EVERYTHING POSSIBLE OR OTHERWISE TO SPEED UP JUDICIAL PROCEDURES AND TO ASSURE THE WELFARE OF THE PRISONERS. STEDMAN

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